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No. 380

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JOHN F. DAVIS, CLERK

IN THE

DISTRICT COURT OF APPEAL

THIRD DISTRICT

PAN-AMERICAN LIFE INSURANCE COMPANY,

Appellant,

vs.

MARIE LORIDO,

Appellee,

PARTIAL TRANSCRIPT OF RECORD

William P. Carter,
Clerk.

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APPENDIX TO APPELLANT'S BRIEF

APPENDIX

AMENDED COMPLAINT (Record 1)

(Caption and exhibits omitted)

The plaintiff, MARIE LORIDO, by her undersigned attorneys, sues the defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, and says:

1. That the Defendant is a corporation, organized and existing under the laws of the State of Louisiana, and doing business in the State of Florida.

2. That plaintiff, MARIE LORIDO, is the wife of

JOSE LORIDO LOMBARDERO, now deceased, and the beneficiary named in Policy No. 381-315 on the life of the said JOSE LORIDO LOMBARDERO.

3. That on November 22, 1943, at Havana, Republic of Cuba, in consideration of the payment of the premium of $466.25 annually during the term of 25 years, the Defendant, by its agents duly authorized thereto, executed its policy of insurance No. 381-315 in writing to JOSE LORIDO LOMBARDERO on his life in the sum of $5,000.00, a copy of which policy has been annexed to the original Complaint herein and marked Exhibit "A" and which by reference is made a part of this Amended Complaint and an English translation of the said policy is annexed hereto and marked Plaintiff's Exhibit "B".

4. That as a further provision of the said policy of insurance, an appendix thereto called for the establishment of a fund amongst a certain class of insureds of the Defendant, to be distributed at the end of ten years, at which time the accumulation of the fund would be divided amongst the surviving members of the said class of insureds.

5. That as a further provision of the said policy of insurance an appendix thereto called for the establishment of a fund amongst a certain class of insured of the Defendant to be distributed at the end of fifteen years, at which time the accumulation of the fund would be divided amongst the surviving members of the said class of insureds.

6. That the said contract of insurance further contained a series of 20 coupons attached thereto which, un-

der the provisions of the policy might be used to reduce the annual premiums or be left with the company to accumulate with compound interest at the rate of 3-½% per annum.

7. That on October 6, 1960, in Havana, Cuba, the insured, JOSE LORIDO LOMBARDERO, died.

8. That up to the time of the death of the insured, all premiums accrued upon said policy were fully paid.

9. That the insured, JOSE LORIDO LOMBARDERO, and Plaintiff, each performed all the conditions of said insurance on their part to be performed and the Plaintiff, prior to the commencement of this action, gave notice to the Defendant of the death of the said JOSE LORIDO LOMBARDERO, and demanded payment of the principal sum of $5,000.00, the face value of the policy, and the further sums due under the above terms and provisions of the said policy.

10. That the sums have not been paid nor any part thereof and that the insurer has further refused to furnish the beneficiary with forms for proof of death as required by the terms of the policy.

11. That there is now due and payble to the Plaintiff from the Defendant the face value of the policy of $5,000.00 plus interest; plus $2,142.00 together with interest on said sum compounded annually at the rate of 3-½% from the date of the execution of the policy on the coupon privileges of the said contract of insurance and in addition there is a sum due and owing to the Plaintiff from the Defendant, as proceeds of the aforementioned

funds as set forth in Paragraphs 4 and 5, which amounts are unknown to the Plaintiff and for which the Plaintiff demands accounting from the said Defendant.

WHEREFORE, Plaintiff sues the Defendant and demands the following:

1. Damages in the amount of $5,000.00 plus interest, and

2. The further amount of $2,142.00 with interest thereon compounded annually at the rate of 3-½% from the date of execution of the policy; and

3. The sums due and owing under the aforementioned special funds together with interest thereon; and

4. Reasonable attorneys fees for the prosecution and collection of the loss under said policy of insurance as provided by §627.0127 F. S. 1959; and

5. Costs of this action, and

6. An accounting of the insurer of the sums due under the aforesaid special funds.

STUART, MUNSON & FRIED
Attorneys for Plaintiff
340 Ingraham Building
Miami 32, Florida

/s/ RAY A. MUNSON

BY_____

WE HEREBY CERTIFY that a true copy of the foregoing Amended Complaint was mailed to MESSRS. DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL, Dade Federal Building, Miami, Florida, Attorneys for Defendant, this 5th day of April, A. D. 1961.

STUART, MUNSON & FRIED
BY /s/ RAY A. MUNSON

ANSWER OF DEFENDANT, with part of one exhibit. (Record 24)

Comes now the defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, and for answer to the amended complaint filed herein says:

1. The amended complaint fails to state a cause of action against the defendant or a claim upon which relief can be granted.

2. The defendant admits the allegations of paragraphs 1, 2 and 3 of the amended complaint, except that it denies that Exhibit "B" is a correct translation of Exhibit "A".

3. For answer to paragraphs 4 and 5 of the amended complaint, defendant admits the same insofar as they are consistent with Exhibit "A", but says that the insured has been paid all sums due him under the sections of Exhibit "A" applicable thereto, and that no sums are due and payable under the applicable provisions of said policy.

4. The defendant admits the allegations of para-

graph 6 of the amended complaint, subject to the affirmative allegations hereinafter contained in this answer.

5. For answer to paragraph 7 of the amended complaint, the defendant says that it has not been furnished with any proof of the fact or date of death of the insured, except that it has been informed verbally by its former agent in Havana, Cuba, that he knows the insured died after September 29, 1959, and prior to the institution of this suit.

6. For answer to paragraph 8 of the amended complaint, the defendant admits the same.

7. Subject to the allegations of paragraph 5 of this answer and to the affirmative allegations hereinafter contained in this answer, the defendant admits the allegations of paragraph 9 of the amended complaint.

8. For answer to paragraph 10 of the amended complaint, the defendant admits the same, but says that because of the facts hereinafter alleged it has referred the plaintiff to the administrator hereinafter mentioned for the purpose of obtaining the forms mentioned.

9. For answer to paragraph 11 of the amended complaint, the defendant denies the same.

10. Further answering the amended complaint, the defendant says:

(a) That prior to the effective date of Law No. 13 of 1948 of the Republic of Cuba, both the Cuban peso and the United States dollar were legal tender in

Cuba, but that subsequently, as the defendant is informed and believes, the Republic of Cuba, by the Monetary Decree of 1951, promulgated in pursuance of said Law No. 13, required all contracts theretofore payable in Dollars to or by Cuban Nationals in Cuba to be payable in Cuban pesos.

(b) The insured, on or about August 15, 1952, agreed with the defendant that the policy described in the amended complaint should be modified so that obligations payable thereunder by either party should thereafter be payable only in Cuban pesos.

(c) The defendant has been admitted to do a life insurance business in Cuba since 1913, and in pursuance of Cuban laws encouraging concerns situated as the defendant was to invest their assets in Cuba, as far back as the 1930s, the defendant had invested in Cuban properties and securities all of its reserves, and more, against business written or liabilities incurred in Cuba, so that, at the times hereinafter alleged, the properties owned by the defendant in Cuba far exceeded its liabilities in Cuba.

(d) On or about September 29, 1959, after the Castro government came into power in Cuba, Law No. 568 was promulgated by the Cuban government, which, in substance and effect, prohibited the defendant from paying any moneys to Cuban Nationals anywhere except in Cuba, or even making any entries in its books of account which would result in credits being made available to Cuban Nationals except in Cuba.

(e) On or about October 24, 1960, the Cuban

government promulgated Resolution No. 3, a true and correct translation into English whereof is attached hereto as Exhibit No. 1, which in substance and effect provided for the forcible expropriation of the Cuban business of the defendant, vested title to all of defendant's Cuban assets in the Cuban government, and substituted the Cuban government as the obligor on all of defendant's Cuban liabilities and contracts, among which is the policy of insurance herein sued on.

(f) The contract herein sued on is a Cuban contract, the application therefor was taken in Cuba, delivery thereof was made in Cuba to a Cuban National, after notarization thereof in Cuba in accordance with Cuban law, the place of performance, thereof, both as to payment of premiums and as to payment of benefits thereunder is in Cuba, and the assets reserved by the defendant for the payment by the defendant of its liabilities thereunder were physically located in Cuba and seized by the Cuban government.

(g) After the expropriation effected by Resolution No. 3, above mentioned, the Cuban government, through the administrator therein referred to, has collected premiums on policies issued by the defendant before the date of expropriation, has collected agents' balances due on defendant's Cuban business and has sought to collect policy loans outstanding on policies issued by defendant prior to such expropriation (though with what success defendant does not know) and has not remitted to the defendant the proceeds of such collections.

(h) The Cuban government, through the administrator therein referred to, has paid claims accruing

on policies issued by defendant prior to such expropriation, has issued further policies in defendant's name, and has in all things substituted itself in the place and stead of the defendant on both past, present and future transactions with its own Nationals.

(i) By reason of the facts aforesaid, the defendant has been relieved of its obligations to Cuban Nationals on policies issued as aforesaid.

11. Further answering the amended complaint, the defendant says that the plaintiff is an alien and entitled to use the courts of the State of Florida only as a matter of comity, that the Cuban courts are no longer open to United States citizens seeking to enforce their contracts there against residents of Cuba, and that by reason of this lack of comity on the part of Cuba, a reciprocal comity will not permit the use of the courts of this state by the plaintiff.

12. Further answering the amended complaint, the defendant says that the purpose and effect of the transactions mentioned in the amended complaint have been frustrated and the defendant thereby released from liability therefor.

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
Miami 32, Florida,

By: /s/ JAMES A. DIXON
Attorneys for Defendant.

I CERTIFY that on this 25th day of April, 1961, a true copy of the foregoing Answer was mailed to STUART, MUNSON & FRIED, attorneys for the plaintiff herein, 340 Ingraham Building, Miami 32, Florida.

/s/ JAMES A. DIXON

PORTIONS OF RESOLUTION NO. 3

"RESOLUTION NO. 3

"WHEREAS, The Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

"WHEREAS: Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

"WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolu-

tion by creating difficulties for national supplies.

"WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.

"WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

"WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.

"THEREFORE: In use of the powers with which we are vested, in accordance with the provisions of Law No. 851 of June (sic July), 1960.

"RESOLVED

"FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which

are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

"Group XX — Insurance Companies
"Pan-American Life Insurance Co.

* * * *

"SECOND: Therefore, the Cuban State is declared subrogated in place and grade of the natural and juridical persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced expropriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

REQUEST FOR ADMISSION NO. 4 (Record 64)

(Caption omitted)

The defendant, PAN AMERICAN LIFE INSURANCE COMPANY, requests the plaintiff named in the caption hereof, on or before November 25, 1961, to make the following admissions for the purpose of this action

only and subject to all pertinent objections to admissibility which may be interposed at the trial:

• • • •

4. That the policy of insurance herein involved was issued upon an application therefor made in Cuba, that delivery thereof was made in Cuba, and that notarization thereof was made in Cuba prior to delivery thereof.

PLAINTIFF'S REPLY TO REQUEST FOR ADMISSION No. 4 (Record 113)

(Caption omitted)

The Plaintiff, replying to Request for Admissions heretofore served upon her by Defendant, says as follows:

• • • •

4. Admitted.

ORDER ON MOTION FOR PROTECTION (Record 115)

(Caption omitted)

This cause came on to be heard upon the plaintiff's Motion for Order of Protection, and during the course of said argument counsel for the defendant stated that the only matter which he wished to establish by the deposition of the plaintiff mentioned in said motion was that she and her husband were citizens and Nationals of the

Republic of Cuba up to and including October 24, 1960, and counsel for the plaintiff in open court stipulated that the plaintiff and her husband were up to and including October 24, 1960, citizens and Nationals of the Republic of Cuba. Whereupon, counsel for the defendant stated that with this stipulation there was no occasion to take said deposition, and the Court being fully advised in the premises, it is, therefore,

ORDERED and ADJUDGED that the plaintiff's Motion for Protective Order be granted.

DONE and ORDERED at Miami, Dade County, Florida, this 22nd day of December, 1961.

/s/ HAL P. DEKLE
CIRCUIT JUDGE.

PRE-TRIAL ORDER (Record 116)

(Caption omitted)

This cause came on to be heard upon a Pre-Trial Conference, during the course of which it was STIPULATED between counsel for the respective parties as follows:

1. That the form of policy in English filed by the defendant in response to the interrogatory propounded by the plaintiff is a true and correct translation of the policy herein involved, and that copy or a duplicate thereof may be received in evidence without other proof.

2. That the insured, JOSE LORIDO, died on October 6, 1960.

3. That the English translations of the Cuban laws attached to the defendant's Requests for Admissions are true and correct translations of the laws referred to and may be admitted in evidence without other or further proof of the correctness of the translation subject, however, to proof by the defendant of the existence of the laws of which they purport to be translations.

4. That affidavits of two practising lawyers in Dade County, Florida, as to the amount of attorneys' fees may be received in evidence without the production of the affiants on the witness stand, but the defendant reserves the right to object to the allowance of any attorneys' fees whatever in this case, even though the plaintiff be successful.

DONE and ORDERED at Miami, Dade County, Florida, this 5th day of January, 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE.

EXCERPTS FROM TESTIMONY OF DR. FRANCISCO FIGUEROA (Record 198)

"DIRECT EXAMINATION

BY MR. DIXON:

Q Will you please state your name.
A Francisco Figueroa.

Q Where are you presently residing?
A In Miami.

Q What is your nationality?
A Cuban.

Q What has been your educational background?
A Well, elementary and high school education in Cuba and in the States in Pennsylvania, and then Doctor in Law at Havana University, and LLB degree at Tulane University in 1934.

Q And since 1934, what has been your occupation or profession?
A Practicing attorney.

Q And where?
A In Havana with the firm of Lazo Y Cubas.

Q And can you give the Court any idea of the size of that firm?
A Well, when we had to close and leave Cuba we were 22 lawyers.

Q Have you done any work in any specialized field?

MR. MUNSON: Does that make him a better lawyer, Mr. Dixon?

MR. DIXON: It shows that they have been successful.

MR. MUNSON: That is problematical. Go ahead.

Q (By Mr. Dixon) Have you specialized in any particular field of law?
A Yes. For the different fields during the years.

I mean, railroad law, insurance and contracts, operation of law in general.

* * * * *

Q (By Mr. Dixon) Dr. Figuero, have you familiarized yourself with Law No. 568 of September, 1959?

A Yes.

Q Do you have the Spanish text and the English translation of that law?

A Yes, sir. It is the law of 1968.

MR. MUNSON: 1968?

THE WITNESS: 568. I am sorry. Law 568, September 23rd, 1959, published in the Official Gazette of September 29, 1959.

Q (By Mr. Dixon) Have you compared the English translation with the Spanish text?

A Yes.

Q Does the English translation correctly reflect the substance of the Spanish text?

A It does.

MR. DIXON: We offer it in evidence.

* * * * *

Q (By Mr. Dixon) Dr. Figuero, have you familiarized yourself with the Spanish text of the expropriation decree of October 24, 1958?

A Yes.

Q Do you have the Spanish text here and the English translation?

A We have the English translation and the Spanish text published by this publication called Leyes del Gobierno Provisional de la Revolucion. It is not the official— The official publication is the Official Gazette.

Q What is the nature and function of the book which you hold in your hand, and how is it used?

A Well, this book—this book was published right after January 1st, 1959, when Castro came into power and they started to issue new laws, and to familiarize—I mean, to get to the interested parties, the attorneys, the justices and everybody— I mean, this is sort of a compilation, a monthly compilation of all those laws.

Q Is that generally used and accepted by Cuban Bar as being the correct statement of decrees issued by the government?

A Yes, yes. I have had opportunities in many cases because, unfortunately, many of our clients were affected by this resolution, the resolution of the President of the Republic, and I have worked many times with this booklet after, of course, having checked with the Official Gazette.

Q And is the booklet which you hold in your hand, is that your property or the property of some others?

A It is the property of the University of Miami. Dr. Riverend.

Q It has been borrowed from them?

A Yes.

MR. DIXON: If the Court please, we would at this time request— We will offer the book, or that portion of the book which embodies Resolution No. 3, together with the English translation, and I would like to substitute a photostatic copy of the English text so that the book itself can be returned to the University of Miami.

MR. MUNSON: I don't see any objection to that, your Honor, subject to my usual objection.

THE COURT: All right, then, the English translation of it— You need not submit the book at all. I don't believe it will serve any purpose at this time.

MR. MUNSON: That is the same as Resolution No. 3, Mr. Dixon?

MR. DIXON: Yes.

THE COURT: This is the Resolution No. 3, what I would refer to as the infamous resolution with regard to confiscation generally by the Castro regime.

MR. DIXON: This one names specific companies.

THE COURT: And it includes this defendant?

MR. DIXON: Yes, sir. It refers to Pan American Insurance Company in Paragraph 20. This one names the specific American companies and expropriates their assets.

We will offer that in evidence.

* * * *

BY MR. DIXON:

Q Dr. Figueroa, I have only two further questions of you that I can think of now. One is this: Under the law of Cuba, what effect did the Resolution No. 3 which you have identified have upon the relationship between the insured or the beneficiary and the Pan American Life Insurance Company?

MR. MUNSON: Objection, your Honor. Now, this is a matter for the interpretation of the Court and not for an expert witness.

We stipulated that we would permit these lawyers from Cuba to testify as expert witnesses in connection with the admissibility of particular laws, but he is drawing a legal conclusion. It is only permissible for a judicial tribunal to rule on.

THE COURT: I will consider his answer only as advisory only. I will overrule the objection.

THE WITNESS: Well, the Resolution No. 3, the effect of Resolution No. 3 was to subrogate and place instead of Pan American Life Insurance Company, in this case, which is specifically mentioned in Resolution No. 3, the Cuban government who would take over the assets, the properties—assets and liabilities. They would assume the liabilities of the company and everything as a consequence of the expropriation and nationalization of this company.

The Cuban government— the Banco de Seguros Sociales de Cuba in this case would go ahead and was au-

thorized by Resolution No. 3 to record in their name in the mercantile registries and companies—all the company's property, everything concerning the company in Cuba.

So they are and they continue in Cuba with that business. I mean Pan American—I mean that certain activities of Pan American Life Insurance or the other companies have been continued by the government and serviced by the government. So I would say that the government has subrogated and is in place instead of Pan American Insurance as the insurance company with respect to the insured. Especially where—of course, not especially but, of course, contracts issued in Cuba to a Cuban citizen, which is considered—it is a Cuban contract issued by the Havana office.

Q (By Mr. Dixon) Is it the substance of your answer, then, that the Cuban government is liable, if anyone is, on this contract?

A Yes."

EXCERPT FROM TESTIMONY OF DR. EDUARDO LE RIVEREND (Record 235)

"DIRECT EXAMINATION

BY MR. DIXON:

Q Please state your full name and present place of residence.

A Eduardo le Riverend, and my address is 550 Southwest 7th Street, Miami.

Q Doctor, are you a citizen and national of Cuba?
A Yes, by birth.

Q And will you tell us what your educational background has been?
A Well, I was in elementary school in Cuba, high school in Cuba, and I have my degree as a doctor in civil law from the University of Havana in 1928.

Q And what has been your experience in the practice or teaching of law?
A Teaching. Well, since 1938 up to the 14th of January, 1959, I was a professor of civil law in the University of Havana, and besides, I was invited two or three times by the University of Miami to deliver some lectures on different matters.

Q Have you ever held any official position in the Republic of Cuba?
A Yes. Well, this was an official position in the University of Havana, but besides—

Q Have you held any other position?
A Since the 14th of January until the 19th of December—January, 1959, up to the 19th of December, 1960, when I resigned, I was Associate Justice of the Supreme Court of the Republic of Cuba.

Q Doctor, you have been present in the room and have heard the testimony that has been offered here as to the transaction relating to this policy of insurance?
A Yes.

Q Will you please tell us what effect on the Cuban

law Resolution No. 3 would have upon the Republic between the Pan American Insurance Company and either its insured or the beneficiary in the policy presently involved in this cause.

MR. MUNSON: Your Honor, I will make the same objection that I made before. This case is being tried under the law of Florida. The policy plainly recites that performance of the policy is to be made in New Orleans, Louisiana, and the payments would be made in dollars and cents, and the benefits thereof will be paid in Louisiana in dollars and cents.

The law of Cuba is inapplicable in this matter and is immaterial in this case.

THE COURT: Overruled. You may answer.

THE WITNESS: I think Resolution No. 3 is very clear. It states that this resolution was issued by the President of the Republic in compliance with a previous law, No. 8051, July, 1960. The resolution is dated the 24th of October, 1960. It states in the first paragraph and it orders the nationalization by means of expropriation and by consequences going to the Cuban state in full property all belongings, all goods and property and firms situated in the national territory and the rights and rights of action coming from the exploitation of said businesses which are the property of North Americans or natural persons, and then he states the numbers and lists the complete list of the firms which were expropriated.

Paragraph No. 2 expresses this very clearly:

"'Consequently, it is declared that the Cuban state is subrogated in stead of the natural and jurisdictional persons referred to in the preceding section with respect to the properties, rights, and rights of actions above mentioned, as well as receipts and liabilities which form the capital of the said firms.'

So, in my opinion, inasmuch as this resolution doesn't say that these firms have to go out from the country — no, they just put instead of such firms, some other entity which is the Cuban state represented by the Cuban government. From now on, from this date or from the date in which this resolution was applied to any company, instead of such company you may go to the Cuban government and present any right that you think of against those companies and the government has to comply with the contracts and go ahead between— In this case, between the insured person and the company. So the Cuban government is in the place of the insurance company."

TEXT OF LAW NO. 568 of September 29, 1959.

NOTE: This appears in the record twice, — first, as part of defendant's request for admission (Record page 64) and second, as an exhibit introduced in evidence at the trial. The first record reference is page 98, the second is at page 210, where the text of this law was admitted into evidence as Defendant's Exhibit J.

"I, Osvaldo Dorticos Torrado, President of the Republic of Cuba, do hereby proclaim that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS: Title II of Law No. 13 of December 23, 1948, provided for the organization of the Currency Stabilization Fund, and entrusted it with the fundamental mission of protecting the national currency on the exchange market, for which purpose the legislation supplementary thereto broadened the scope of its powers vesting it with the authority necessary for the regulation of international exchange transactions.

WHEREAS: During the years in which the tryanny was in power a constant drainage of foreign exchange was propitiated to cover the funds taken away by the beneficiaries of the deposed government, a practice which some interested parties are still trying to continue through speculation and by deviating the channels of incoming foreign exchange on which the nation depends, or by the remittance of foreign funds through illegal methods, thereby ostensible delaying the restoration of our monetary reserves and the preferential application of the national resources to the economic development of the nation.

WHEREAS: It is necessary therefore, to define clearly and precisely the felonious acts constituting crimes against the economy of the na-

tion, fixing the penalties applicable to the different degrees of criminal liability, and to confer upon the Currency Stabilization Fund and the judiciary the broad powers required for the protection of the general interests of the Republic.

NOW, THEREFORE; In pursuance of the powers vested in it, the Council of Ministers has resolved to enact the following

LAW NO. 568

Article 1.—For the purposes of this law, the following are considered felonies of monetary contraband:

* * * *

(6) To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, traveller' checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

7) To export or import national currency in excess of the limit that set now or hereafter by the Currency Stablization Fund.

8) To establish credits in national currency for persons residing abroad or for residents of Cuba for the account of residents abroad.

9) To assign or transfer credits in national currency to residents abroad, make payments for their account in national currency and set up credits in bank accounts the holders whereof reside broad without first complying with the rules issued by the Currency Stabilization Fund in this respect.

10) To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

• • • •

Article 2. — The persons guilty of the felony of currency contraband referred to in the preceding article shall be liable to a penalty of imprisonment for from 6 months and 1 day to 3 years, or a fine of one to two thousands quotas, or both.

If the felony is committed by directors, representatives, officers or employees of banks, corporations, or artificial persons while acting in pursuance of their functions as such, the penalty shall be increased from one fourth to one half, in the discretion of the Court, and the firm to

which they belong will be subsidiarily liable for the cash penalties imposed.

Article 3. — a) Any person who sells or in any way assigns, transfers or transmits currency, checks, drafts, orders of payment, travellers' checks or any similar paper in foreign currency shall be liable to imprisonment for from 6 months and 1 day to 3 years; or to a fine of one to two thousand quotas, or both."

PORTIONS OF TEXT OF RESOLUTION NO. 3 OF OCTOBER 24, 1960.

NOTE: The full text of this Resolution appears in the record twice, — first as a part of defendant's request for admissions and second, as an exhibit admitted in evidence at the trial as Defendant's Exhibit K (Record page 213).

"RESOLUTION NO. 3

"WHEREAS, The Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

"WHEREAS: Among the multiple measures adopted by the Government of the United States

of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

"WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which its pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

"WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.

"WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

"WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms to be liquidated which presently constitute the remainder in our country of the financial capital of that country.

"THEREFORE: In use of the powers with

which we are vested, in accordance with the provisions of Law No. 351 of June (sic July), 1960.

"RESOLVED

"FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

Group XX — Insurance Companies
"Pan-American Life Insurance Co.

* * * *

"SECOND: Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridicial persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced ex-

propriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

FINAL JUDGMENT dated June 6, 1962 (Record 276)

(Caption omitted)

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban national in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monitary decree of 1951 in pursuance of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's third position is that the confiscation

of defendant's insurance business in Cuba by Cuban Resolution #3 avoids any liability under this contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in this court's opinion of even date in **Raij v Pan American Life Insurance Company**, Circuit Court of Dade County, in Chancery, 61C 7089.

The Court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars, that the insured by his actions in both paying premiums and receiving benefits in pesos, thereby accepted the modification for such payment under Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars was effectively modified and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the present United States exchange rate, based upon the face amount of the policy, interest and other benefits provided in the policy and accordingly.

IT IS ORDERED that plaintiff do have and recover of and from the defendant said sums upon application and calculation of the amount involved as above provided.

IT IS FURTHER ORDERED that plaintiff do have and recover of and from defendant the further sum of

$1,500.00 in United States Dollars hereby fixed and awarded as a reasonable attorney's fee for services herein of plaintiff's attorneys.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 6th day of June, 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE

cc: Ray A. Munson, Esq.

Dixon, DeJarnette, Bradford,
Williams, McKay & Kimbrell, Esqs.

DEFENDANT'S MOTION FOR NEW TRIAL

(Record 117)
(Caption omitted)

COMES NOW the defendant in the above styled cause and moves the court to set aside the judgment, findings of fact and conclusions of law; for a judgment in favor of said defendant notwithstanding the court's findings and judgment entered in this cause without a jury trial, and if these motions are denied, the defendant moves the Court for an order granting a new trial in this cause on the following grounds, separately and severally, to-wit:

(1) The verdict, judgment, findings of fact and conclusions of law are contrary to the evidence.

(2) The verdict, judgment, findings of fact and conclusions of law are contrary to the manifest weight of the evidence.

(3) The court erred in failing and refusing to give effect in this cause to Cuban Law No. 13 of 1948.

(4) The court erred in failing and refusing to give effect in this cause to Cuban Law No 568, of September 29, 1959.

(5) The court erred in failing and refusing to give effect in this cause to Cuban Resolution No. 3, of October 24, 1960, substituting the Cuban State as the obligor on policies of insurance issued by defendant in Cuba.

(6) The court erred in failing and refusing to give effect to Article VIII, sec. 2(b) of the Bretton Woods Monetary Agreement of 1945, to its adoption as the law of the United States of America by Congressional enactment, in 22 U. S. C. A. section 286 eq seq., and particularly sec. 286 H.

(7) The court erred in failing and refusing to follow the public policy of the United States of America extending diplomatic recognition to the revolutionary (Castro) government of Cuba, thereby recognizing it as a sovereign power, with powers over its currency, foreign exchange and the rights and duties of its na-

tionals equal to those of the United States of America.

DATED this 12th day of June, 1962.

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: /s/ JAMES A. DIXON
Attorneys for Defendant.

I CERTIFY that on this 12th day of June, 1962, a true copy of the foregoing Motion to Set Aside Judgment, Findings of Fact and Conclusions of Law; Motion for New Trial, and Motion for Judgment Nothwithstanding Court's Findings and Judgment was mailed to RAY A. MUNSON, Ingraham Building, Miami, Florida.

/s/ JAMES A. DIXON

AMENDED FINAL JUDGMENT, dated September 24, 1962 (Record 278)

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban na-

tional in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monitary decree of 1951 in pursuance of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's third position is that the confiscation of defendant's insurance business in Cuba by Cuban Resolution #3 avoids any liability under this contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in the court's opinion of even date in **Raij v Pan American Life Insurance Company**, Circuit Court of Dade County, in Chancery, 61C 7089.

The court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars, that the insured by his actions in both paying premiums and receiving benefits in pesos, thereby accepted the modification for such payment un-

der Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars was effectively modified and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the rate of exchange of Cuban pesos for United States Dollars prevailing in Miami, Florida, on November 28, 1960, based upon the face amount of the policy, interest and other benefits provided in the policy.

The court finds and determines that the proper conversion date, aforesaid is November 28, 1960, that being the date of a letter from the defendant to the attorneys for the plaintiff denying liability for the claim asserted against the defendant by the plaintiff.

The court thereupon heard testimony of witnesses for the respective parties as to the said rate of exchange prevailing on said date, and based upon such testimony the court finds and determines that said exchange rate on said date was that one Cuban peso was worth $.245 United States dollars.

The court thereupon by separate order and judgment, entered judgment in favor of the plaintiff and against the defendant, which said separate order and judgment are hereby incorporated herein as fully as though set out herein in words and figures.

The court further heard argument of counsel for the respective parties on the defendant's motions to set aside judgment, findings of fact and conclusions of law, motion for new trial and motions for judgment notwith-

standing court's findings and judgment, and on consideration therefore, it is

ORDERED and ADJUDGED that the said motions be and they are hereby denied.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 24th day of September, 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE.

FINAL MONEY JUDGMENT

dated September 24, 1962 (Record 281)

(Caption omitted)

THIS CAUSE came on to be heard on Plaintiff's Motion to Tax Costs and for the Entry of a Final Money Judgment pursuant to the Final Judgment of this Court entered on the 6th day of June, 1962, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is, upon consideration thereof,

ORDERED and ADJUDGED that the Plaintiff, MARIE LORIDO do have and recover of and from the Defendant, PAN AMERICAN LIFE INSURANCE COMPANY, a New Orleans corporation, the sum of One Thousand Nine Hundred Thirty-Nine & 64/100 Dollars ($1939.64) together with the further sum of Fifteen Hundred Dollars ($1,500) as attorney's fee and her costs expended in the prosecution of this action which are hereby taxed in the amount of Three Hundred Five & 07/100

Dollars ($305.07), for all of which sums let execution issue immediately.

DONE and ORDERED in Chambers in Miami, Dade County, Florida, this 24 day of Sept., 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 1962, a true copy of the foregoing Appendix to Appellant's Brief was mailed to RAY A. MUNSON, 340 Ingraham Building, Miami 32, Florida.

JAMES A. DIXON, JR.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JANUARY TERM, A. D. 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Opinion filed May 14, 1963.

An Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell, for appellant.

Ray A. Munson, for appellee.

Before PEARSON, C.J., and HORTON and HENDRY, JJ.

PER CURIAM.

Affirmed on the authority of Pan American Life Insurance Co. v. Recio, Fla.App.1963, __So.2d__. [Case No. 62-452, opinion filed May 7, 1963, not yet reported]

A True Copy
ATTEST:
WILLIAM P. CARTER
Clerk District Court Of Appeal
of Florida, Third District
By EVELYN A. HILLMAN
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and moves this Honorable Court to grant a rehearing of this cause, and for grounds thereof shows:

1. The opinion in this case affirms the judgment of the lower court on the authority of the opinion of this court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. RECIO (Case No. 62-452).

2. Your petitioner has filed a petition for rehearing in the last mentioned case, a true copy of which is attached hereto and made a part hereof, and your petitioner adopts the statements therein contained as the grounds of this petition.

3. The opinion of this court in the RECIO case did

not refer to or otherwise pass upon the defense asserted by your petitioner in that case based upon Cuban Law No. 568, the Bretton Woods Agreement relating to the International Monetary Fund, and the Federal legislation pertaining thereto (22 U. S. C. A. 286 et seq.). Your petitioner assumes that this was due to the fact that this court had previously stricken from your petitioner's brief in the RECIO case the section relating to this defense. No such action was taken in the present case and the sufficiency of this defense was argued both in the briefs and in oral argument. An express ruling by this court upon such an important matter as a Federal executive agreement approved by both Houses of the Congress and legislated in part into the law of the United States (22 U. S. C. A. 286 h) would be of great assistance to other courts which will be called upon to pass on this matter in other cases. The legal questions presented by this defense are of such importance that they should not be disposed of **sub silentio.**

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE

I CERTIFY that on this 16th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to MR. RAY A. MUNSON, 340 Ingraham Building, Miami 32, Florida, the attorney of record for the plaintiff in the foregoing cause.

JAMES A. DIXON

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 62-452

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

AGUSTIN GOYTISOLO RECIO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and petitions this Honorable Court to grant a rehearing in this cause, and as grounds for this petition shows:

1. The opinion in this case was filed May 7, 1963. A few days later on May 14, 1963, this Court filed an opinion in Case No. 61-827, styled NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al.

2. Your petitioner respectfully suggests that these two opinions are inconsistent with each other, as will hereafter be pointed out.

(a) The confiscation complained of in the Kane case was effected under Resolution No. 3, of October 24, 1960, of the Republic of Cuba. If the Court will refer to the text of

this resolution attached to the Answer of your petitioner in the Circuit Court, the Court will see that AGENCIO de TRACTORES y EQUIPOS, of which the Kanes were stockholders, is listed as one of the concerns expropriated by section 1 of that resolution. Its name appears in Group XXI in that section. This is the same resolution which expropriated your petitioner, whose name appears in Group XX of this same section.

(b) In section 2 of this resolution, it is provided that the Cuban State is substituted as the obligor on the liabilities of the expropriated concerns. See also the affidavit of the Cuban lawyer, DR. MENDIGUTIA.

(c) In the Kane case, the opinion recognizes that the expropriation effected by the first section of the resolution was an "act of state" on which the courts of this country will not sit in judgment.

(d) In this case, the court apparently says that the substitution of obligors effected by the second section of the resolution was not an "act of state" and refused to recognize its effectiveness upon the rights of Cuban nationals. Your petitioner is thereby deprived of a defense accruing to it under Cuban law.

(e) The application of the "act of state" doctrine in the Kane case frees an agency of the Republic of Cuba from liability to an American citizen. The refusal to apply that doctrine in this case imposes a liability on an American company from which the law of the plaintiff's sovereign has relieved it.

3. This Court has apparently in this case relied heavily upon the case of BANCO NACIONAL de CUBA v. SABBATINO, 307 F. 2d 845, notwithstanding the fact that in that case certiorari has been granted by the U. S. Supreme Court, although this fact is adverted to in the Kane opinion. The opinion in this case also relies upon the case of RODRIGUEZ v. PAN-AMERICAN, 311 F. 2d 429, which is now pending in the U. S. Supreme Court on petition for certiorari. The Court in this case has apparently overlooked the fact that neither of these cases is final.

4. The opinion in this case states that your petitioner relies "most heavily" upon the case of DOUGHERTY v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 266 N. Y. 71; 193 N. E. 897, which the opinion then proceeds to distinguish on its particular facts. The Court has apparently overlooked the fact that your petitioner relies even more heavily upon cases such as BERNSTEIN v. VAN HEYGHEN FRERES, 163 F. 2d 246, and PONS v. REPUBLIC OF CUBA, 294 F. 2d 925, (cert. denied in both) which are recognized as controlling authority in the Kane opinion. Your petitioner also relies heavily upon the decision in TILLMAN v. NATIONAL CITY BANK, 118 F. 2d 631 (cert. denied 314 U. S. 1009, 62 S. Ct. 96, 86 L. Ed. 521) in

its holding that a recognized foreign sovereign has the power to force an "involuntary novation" upon its nationals.

5. Since the opinion in this case does not discuss or even cite the case of PAN-AMERICAN LIFE INS. CO. v. BLANCO, 311 F. 2d 424, your petitioner can only assume that the Court has overlooked it.

6. The opinion in this case says that your petitioner asks that this Court "enforce the expropriation decrees entered by the present government of Cuba." This portion of the opinion does not fairly state the position of your petitioner. That position is that Resolution No. 3 not only expropriated the Cuban assets of your petitioner but also, and most important, substituted the Cuban State as the obligor upon prior liabilities. Recognition of this fact is a far cry from "enforcing expropriation decrees". This resolution is used as a shield by your petitioner, not as a sword. In the Kane case, the opinion permitted it to be used as a shield by the NATIONAL INSTITUTE OF AGRARIAN REFORM. In the SABBATINO case, the National Bank of Cuba was using the resolution as a sword, asking affirmative relief based upon it. We believe that the Court in this case has overlooked this distinction.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE.

I CERTIFY that on this 15th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to CAREY, GOODMAN, TERRY, DWYER & AUSTIN, 650 Seybold Building, Miami 32, Florida, the attorneys of record for the Appellee herein.

JAMES A. DIXON

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JANUARY TERM, A.D. 1963
WEDNESDAY, MAY 29, 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District
By EVELYN A. HILLMAN
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

MARIE LORIDO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT.

RAY A. MUNSON,
340 Ingraham Building,
Miami 32, Florida,

Attorney for Respondent.

JAMES A. DIXON and
DAVID S. STERN,
DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
101 East Flagler Street,
Miami 32, Florida

Attorneys for Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, PAN-AMERICAN LIFE INSURANCE COMPANY, presents this, its petition for a Writ of Certiorari and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal, Third District, dated May 14, 1963, and filed in the records of said District Court on the 14th day of May, 1963, in Minute Book 6, Page 235, and an order dated May 29th, 1963, and filed in the records of said District Court on the 29th day of May, 1963, in Minute Book 6, Page 263.

2. This petition is presented under and pursuant to Article 5, Section 4, of the Florida Constitution and Rule 4.5c of the Florida Appellate Rules.

3. This petition is accompanied by a certified copy of the decision of the said Court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. KECIO, Fla. App. 1963, No. 62-452, opinion filed May 7, 1963, not yet reported, on the authority of which the said court in this case affirmed the lower court per curiam.

4. The following are the facts of this case:

(a) The respondent, MARIE LORIDO, is the widow of a deceased Cuban national to whom PAN-AMERICAN LIFE INSURANCE COMPANY issued a

policy of insurance in Cuba in 1943. The respondent is herself a national of Cuba.

(b) The application for the policy in question was made in Spanish and in Havana. The policy, which was in Spanish, was prepared in the home office in New Orleans, was mailed to the company's general agent in Havana. It was countersigned and taken by the general agent before a Cuban notary in Havana, and the general agent authenticated the signatures of the company's officers by notarial act. The policy was then delivered in Cuba to the insured and the first premium paid in Havana.

(c) The policy was originally payable in U. S. dollars. Judge Dekle, in the Circuit Court, ruled that, due to certain facts proved during the trial, it had been converted, by the agreement of the company and the insured, into a peso policy.

(d) The insured died in the early part of October, 1960, but no proof of death was submitted to the company until during the trial, at which time a death certificate was produced by the plaintiff and introduced into evidence. This suit was brought by the beneficiary to recover the death benefits.

(e) The company based its defense principally upon certain Cuban laws. These are as follows:

(1) The monetary law No. 13 of 1948, and an implementing Resolution No. 1384. The law created the National Bank of Cuba and provided that after a date

to be fixed by resolution the Cuban peso would be the only legal tender. Resolution No. 1384 fixed this date as July 1, 1951. Prior to that time both the Cuban peso and the U. S. dollar had been legal tender. However, Judge Dekle's ruling, that, by agreement, the policy had been converted to a peso policy, made this law immaterial. However, his ruling to this effect was not made for some time after the Spanish text (and English translation) of this law and resolution had been admitted into evidence.

(2) Law No. 568, of September 29, 1959. This is the Monetary Contraband Law which makes it illegal to pay money to a Cuban national (or to receive money from a Cuban national) anywhere except in Cuba or in any currency except Cuban pesos, or even to make credit available to a Cuban national except in Cuba and in Cuban currency. It was contended in the lower court (and is here) that this law destroyed the right of Cuban nationals, such as the plaintiff, to sue in the courts of this country on a claim for a dollar recovery. It was also contended in the lower court (and is here) that this is the type of currency control law contemplated by Art. VIII (2)(b) of the Bretton Woods Agreement, which by Con-

gressional enactment (22 U. S. C. A. 286 et seq.) has become a part of the law of the United States, which the courts, State and Federal, are required to enforce.

(3) Law No. 851 of June, 1960. This provided for the issuance of resolutions of intervention and expropriation. By Resolution No. 3 of October 24, 1960, promulgated in pursuance of this law, the Cuban assets of the appellant forcibly expropriated, and the Cuban state was substituted as the obligor on the Appellant's outstanding Cuban policies of insurance. It was contended in the lower court (and is here) that this took away from the plaintiff the right of the plaintiff to look to the appellant for performance and confined her to her rights under the policy against the Republic of Cuba.

(f) At the trial the petitioner introduced into the record the testimony of Sr. J. V. Bird, appellant's general agent in Cuba, showing the forcible expropriation of the appellant's Cuban assets.

(g) The petitioner also presented the testimony of two prominent Cuban lawyers, Dr. Francisco Figueroa and Dr. Eduardo Le Riverend. These gentlemen testified as to the existence of the Cuban laws and resolutions above referred to and as to their legal effect under Cuban law upon the rights of the plaintiff. Their testimony

completely upheld the petitioner's position, and was uncontradicted.

(h) On June 6, 1962, Judge Dekle entered what is styled a final judgment, but it reserved a ruling, in effect, upon the equivalent in Cuban pesos of the face amount of the policy The appellant filed a motion for a new trial and at a subsequent hearing, at which testimony was taken, Judge Dekle fixed the conversion value of the Cuban peso at $.24 ½ in U. S. currency and entered what is styled as amended final judgment, denied the appellant's motion for a new trial and entered a money judgment in favor of the plaintiff.

(i) The District Court of Appeal affirmed per curiam.

5. On the foregoing facts the Court was presented with the following points of law:

> WHEN A RECOGNIZED FOREIGN SOVEREIGN ENACTS A LAW EXPROPRIATING THE ASSETS IN THE SOVEREIGN'S TERRITORY BELONGING TO AN AMERICAN INSURANCE COMPANY AND ASSUMES THE LIABILITIES OF SUCH INSURANCE COMPANY TO ITS NATIONALS, MAY A NATIONAL OF THAT SOVEREIGN SUE IN THE COURTS OF THIS COUNTRY TO COMPEL THE INSURANCE COMPANY TO PAY POLICY BENEFITS ON CONTRACTS MADE IN THE TERRITORY OF THE FOREIGN SOVEREIGN?

On this point of law the District Court of Appeal,

Third District, held, by its reliance upon its own opinion in the **RECIO** case above-cited that the "act of State" doctrine did not apply to the expropriation of petitioner and the substitution of the Republic of Cuba as the obligor on the policies of insurance theretofore issued by the petitioner in Cuba.

6. The same point of law was involved in the case of NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al., decided by the District Court of Appeal, Third District, on May 14, 1963, Case No. 61-827, not yet reported. A certified copy of that opinion is attached to this petition as Exhibit 1. The facts involved in that case were as follows:

(a) A Cuban corporation, AGENCIO de TRACTORES y EQUIPAS, S. A., in which the controlling stockholders were American citizens, was expropriated by Resolution No. 3, of October 24, 1960, the same decree by which the petitioner was expropriated.

(b) These American citizens sued the NATIONAL INSTITUTE OF AGRARIAN REFORM, an arm of the government of the Republic of Cuba for the value of the expropriated property, and were able to obtain personal jurisdiction thereof.

(c) The lower court entered judgment against the defendant, who took an appeal.

On these facts the District Court of Appeal, Third District, ruled that the "act of State" doctrine "did apply and that the Court could not declare the invalidity of

the Cuban decree" as a basis for creating a right of recovery in the plaintiff in this cause.

7. The decision of the District Court of Appeal which the petitioner seeks to have reviewed is in direct conflict with the decision in the **KANE** case. Because of the reasons and authorities set forth in petitioner's brief, it is believed that the decision hereby sought to be reviewed is erroneous, and that the conflicting decision in the **KANE** case is correct and should be approved by this Court as the controlling law for the State of Florida.

8. (a) The petitioner would further show that the decision here sought to be reviewed also involved a further question of law which may be stated as follows:

> WHEN A RECOGNIZED FOREIGN SOVEREIGN ENACTS A LAW WHICH PROHIBITS PAYMENTS TO OR BY ITS NATIONALS ANYWHERE EXCEPT IN THE SOVEREIGN'S TERRITORY AND IN THE SOVEREIGN'S CURRENCY, MAY A CITIZEN AND NATIONAL OF THAT SOVEREIGN MAINTAIN AN ACTION IN THE COURTS OF THIS COUNTRY TO COMPEL PAYMENT OF A DEBT IN THIS COUNTRY AND IN THE CURRENCY OF THIS COUNTRY?

(b) This question is raised by Cuban Law No. 568, referred to above, and the effect required to be given it by the Bretton Woods Agreement, which provided for the creation of the International Monetary Fund, and the Federal Statutes implementing it and enacting two

portions of the Agreement into the positive law of the United States. See 22 U. S. C. A. 286, particularly 286 h.

(c) The District Court of Appeal, Third District, made no mention of this question in its per curiam opinion in this case, and it was likewise passed over in the opinion in the **RECIO** case, on the authority of which this case was affirmed.

(d) The petitioner assigned error on this question and it was argued orally and in the briefs. Petitioner likewise called the attention of the court to this question in its petition for rehearing. Despite this, neither this opinion nor the opinion in the **RECIO** case made mention of the matter.

(e) The petitioner can only assume that the District Court of Appeal, sub silentio, held the Bretton Woods Agreement to be invalid though approved by both Houses of Congress, and also held invalid the Federal Statute above cited.

WHEREFORE, the petitioner requests this Court:

(a) To grant a Writ of Certiorari and enter its order quashing the decision and order hereby sought to be reviewed, approving the decision in the **KANE** case as the correct decision;

(b) If this court shall be of the opinion that the question mentioned in paragraph 8 hereof is one as to which an appeal only lies, that this petition be deemed to be treated as an appeal from the decision of the District Court of Appeal, as one initially passing upon the validity

of a Federal statute and treaty, as provided in Art. V, Sec. 4(2) of the Constitution of the State of Florida.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami 32, Florida

By: JAMES A. DIXON
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Petition was served by mail on RAY A. MUNSON, attorney of record for the respondent, on the 11th day of June, 1963. I further certify that a copy of this Petition was today filed in the office of the clerk of the District Court of Appeal, Third District.

DATED this 12th day of June, 1963.

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Petitioner

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1963
TUESDAY, JULY 16, 1963

CASE NO. 32,795

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

MARIE LORIDO,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal of Florida, Third District, in said cause bearing date May 14, 1963, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy

TEST:

GUYTE P. McCORD
Clerk Supreme Court.

CLERK CERTIFICATE

I, William P. Carter, Clerk of the District Court of Appeal, Third District, do hereby certify as follows:

1. The foregoing pages numbered 1 to ___ are true and correct copies of the following documents in my custody and control as clerk of the said court, to wit:

(a) The appendix to the brief of the appellant, Pan-American Life Insurance Company, in the above captioned cause.

(b) The order and decision of this court affirming the judgment of the court from which appeal was taken to this court.

(c) The petition for rehearing filed in this court by the appellant.

(d) The order of this court denying said petition for re-hearing.

(e) The petition for a writ of certiorari from the Supreme Court of Florida to this court in this cause.

(f) The order of the Supreme Court of Florida denying said petition for certiorari.

2. The appellee herein, Marie Lorido, did not file an appendix to her brief in this court.

3. The petition for a writ of certiorari mentioned in (c) above was filed within the time allowed by law and the Florida Appellate Rules and a copy thereof was filed in my office as required or permitted thereby.

4. The Supreme Court of Florida did not render any opinion in connection with its order denying the said petition for a writ of certiorari.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this court at Miami, Dade County, Florida, this day of , 1963.

William P. CARTER, Clerk,
District Court of Appeal,
Third District